REMARKS

This is responsive to the Office Action mailed February 26, 2009. It is accompanied by a petition to extend the time for response by one month, together with the required fee.

Claim Objections

Claims 34 and 58 are object to insofar as they fail to include the phrase "to provide fall protection to a user" in the preambles thereof. The claims have been amended.

Section 112 Rejections

Claim 58 stands rejected under 35 U.S.C. §112, second paragraph, on two grounds:

1) The claim recites that the toggle bar "spring[s]" open, and there is no spring recited in the claim (so that essential structure is omitted from the claim); and
2) The claim recites a step of "disposing the toggle bar in a closed position," and the structure deemed necessary to perform the step is not recited in the claim (again so that essential structure is omitted from the claim).

Assuming that a spring and a hole plug are essential to performing the method as recited, amending the claim to include these structures will impose no additional limitation on the scope of the claim, and the amendment is acceptable on that basis.

Section 103 Rejections

Claims 34 - 36, 58, and 71 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Temple et al., U.S. Patent No. 3,332,118 ("Temple") in view of Onofrio, U.S. Patent No. 5,702,218 ("Onofrio"), Hamlin, U.S. Patent No. 4,615,514 ("Hamlin"), and further in view of Mortensen, U.S. Patent No. 3,288,014 ("Mortensen").

Claims 34 and 58 have been amended; however, the arguments presented herein apply as well to the claims prior to amendment.

Claim 34

Temple is the base reference, and as best understood, either Onofrio or Hamlin are the secondary references, with Mortensen being a tertiary reference. As best understood, claim 34 is being rejected based on combinations of either (I) Temple-Onofrio-Mortensen, or (II) Temple-Hamlin-Mortensen.

Each of these two possible grounds of rejection depends on modifying Temple, as the primary reference, to include a hole plug. The Examiner argues particularly that it would have been obvious to modify Temple to include the "self centering washer 16'" of Onofrio, "to [hold] the bar in a closed position and to center the device . . . ."

With respect to "holding the bar in a closed position," it is unclear what the Examiner is suggesting. The self centering washer 16' of Onofrio does not serve the purpose of holding the "toggle 18" in a closed position, and it does not appear capable of doing so either. Neither does the "flange 12" of Mortensen or the "pipe junction member 36" of Hamlin hold the corresponding "oblong body 20" and "arm members 20 and 22" in closed positions. Nor would a

washer like the self centering washer 16' be capable of holding the "cross bar 3" in a closed position in Temple (which, by the way, is the ordinary configuration of the device as shown in Figure 1, rendering it needless to provide an additional element for this purpose). Therefore, Applicant cannot make sense of this prong of the Examiner's rationale, and respectfully requests clarification to the extent the Examiner wishes to rely on it.

However, this is believed to be a moot point because, as the Examiner notes, the self centering washer of Onofrio is for the purpose of centering the device in the hole, and the remaining prong of the Examiner's rationale, i.e., that it would have been obvious to use the washer 16' of Onofrio to "center the device" in Temple, is contrary to Temple's teachings. Temple does not seek to "center the device," as can be seen by inspection of Figures 1 and 2. Rather, Temple seeks to allow the cable to swing to one side, apparently for the purpose described at Col. 2, lines 36 - 52.

By contrast, in Onofrio, Hamlin, and Mortensen it is not desired to allow (respectively) the "bolt 12;" the "threaded rod or shaft 12;" and the "screw 38," to swing. Rather, it is desired to fix their positions, and further to center them, so that they extend perpendicular to the surface through which the hole extends.

Because the different bases of rejection (I) and (II) described above share the same incorrect premise, it is not necessary to explore them individually, however, it is worth noting that there are additional reasons, specific to each basis, that the invention is not obvious as explained below.

(I) Temple-Onofrio-Mortensen

As Applicant has explained previously, Onofrio's "self-centering washer 16'" is frustoconical, to serve the purpose taught by Onofrio, i.e., to provide "self-centering." This "self-centering" configuration is incapable of engaging (circumferentially or otherwise) a cylindrical surface as claimed. On the other hand, to make the invention claimed, the shape of the washer in Onofrio must be modified so that it loses its self-centering capability, which would be contrary to the reference's teachings. A rejection based on combining references in such manner as to be contrary to one of the reference's teachings is improper, as MPEP 2145(X)(D)(2) makes explicit:

References Cannot Be Combined Where Reference Teaches Away from Their Combination
It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (The claimed catalyst which contained both iron and an alkali metal was not suggested by the combination of a reference which taught the interchangeability of antimony and alkali metal with the same beneficial result, combined with a reference expressly excluding antimony from, and adding iron to, a catalyst.).

(II) Temple-Hamlin-Mortensen

This ground of rejection depends on modifying Hamlin by changing the "hole plug" configuration to that used in Mortensen, and by adding a spring for biasing the "hole plug."

The "hole plug" element 36 in Hamlin is described as a "universal hollow pipe junction member . . . ." Col. 2, lines 61 - 63. The end "42" (labeled in Figures 1 and 2) of the pipe junction member 36 "is . . . contoured to permit spacer rods 44 and 46 to fit through concaved side wall . . . [portion] 48. *In this manner, pipe junction member 36 is spaced from pipe member 40 a predetermined distance by [the] spacer rods* . . . ." Col. 3, lines 8 - 13 (emphasis added).

Hamlin therefore teaches, not a hole plug, but a member 36 which, although near the hole, does not actually make contact therewith.

Therefore, Hamlin does not teach a hole plug, and it is contrary to the teachings of Hamlin to consider the member 36 to be a hole plug.

There are two necessary implications of the fact that Hamlin does not teach a hole plug:

1) There is no logical reason to use the nipple 10 in Mortensen (which is used as a hole plug) as a teaching or suggestion to modify the member 36 in Hamlin (which is not used as a hole plug).

2) Because Hamlin fails to teach a hole plug in the first place, it provides no logical basis for modifying Temple to include a hole plug regardless of how it is configured.

It may be noted that it is also contrary to the teachings of Mortensen to include a spring for biasing the "hole plug" (nipple 10) toward the "toggle bar" (oblong body 20) as claimed. This follows from Col. 2, line 70 - Col. 3, line 16, which describes that the screw 38 is removed from the device as part of the tightening process, demonstrating (a) that no spring is necessary to tighten the device (and therefore no spring is necessary to hold the nipple 10 tightly against the hole), and (b) that a spring included in the straightforward manner, i.e., coaxially disposed around the screw 38, would fall away from the device during use, making the inclusion of such a spring a nuisance to the user.

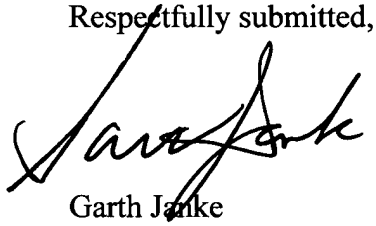
Claim 58

None of the references disclose the step of retaining the "toggle bar" in a "hole plug" as claimed. While it has been asserted in the past that Hamlin is capable of providing such

retention, this is not necessarily so (and so Hamlin is not anticipating), and Hamlin does not recognize utilizing its pipe junction member 36 as a means of retaining the arm members 20 and 22, and therefore does not teach doing so.

For all of the foregoing reasons, it is respectfully submitted that the claims are in condition for allowance and the Examiner is respectfully requested to pass the case to issue.

Respectfully submitted,



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